NARAYANAN v. M.B. VELLAYAPPA CHETTIAR

[O.C.J. (Lai Kew Chai J.) November 14, 1984]
[Singapore – Suit No. 3630 of 1981]

Landlord and Tenant – Original tenant died – Deceased tenant's son carried on business in premises – Notice to quit served on Chief Justice – Whether tenancy with estate of deceased's son.

In this case, the plaintiff sued the defendant as the trustee of the Chettiar's Temple at Tank Road, Singapore, seeking *inter alia* a declaration that the plaintiff was and is at all material times the tenant of a zinc-roofed and wooden shop known as No. 29 Tank Road ("the shop"), the subject matter of the suit. The plaintiff's father became a tenant of the shop before the 2nd World War. In 1969 the plaintiff's father died. Some 20 days later the shop was reopened for business as usual and rent receipts were issued in the name of the plaintiff's late father. This state of affairs continued for some nine years. During this period, the plaintiff was the registered sole proprietor of the business of the shop, having commenced his business in December 1970. The Temple took the view that the tenancy had continued in the estate of the deceased and, since no administration order had been taken out, caused a notice to quit to be served on the Chief Justice, requiring vacant possession to be given by April 2, 1981. Seeing that no vacant possession was given, the officers of the Temple on September 29, 1981 caused the shop to be demolished, thus giving rise to the present suit.

The main issue of fact for determination is whether, as the plaintiff alleges, he in his personal capacity had become a tenant of the shop or whether, as the defendant alleges, the tenancy had remained with the estate of the plaintiff's father.

Held: dismissing the plaintiff's claim, on the evidence adduced, the plaintiff had not been granted an oral tenancy of the shop.

Case referred to:

(1) *Eng Chuan & Co. & Ors.* v. *Four Seas Communications Bank Ltd.* [1982] 2 M.L.J. 81.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiff.
Kan Ting Chiu for the defendant.

Cur. Adv. Vult.

Lai Kew Chai J.: In this action, the Plaintiff is asking for a declaration that he was and is at all material times the tenant of a zinc-roofed and wooden shop known as No. 29 Tank Road, Singapore (hereinafter referred to as "the shop"). He also asks for a mandatory injunction that the Defendant do rebuild the shop which the Defendant had unlawfully demolished in September 1981 and for an injunction restraining the Defendant, *inter alia*, from interfering with his quiet enjoyment. Alternatively, and as a last resort, he is asking for compensatory and punitive damages against the Defendant for depriving him of his rent-controlled tenancy of the shop by demolishing it and making it impossible for the Plaintiff to be reinstated in the shop.

The Defendant is sued as a Trustee of the Thandayuthapani Temple also known as The Chettiar's Temple, at Tank Road, Singapore, a charitable trust, on whose land was erected the shop.

I will now set out the facts which have not been in controversy over the first two days of the trial. The Plaintiff's father, one Suppiah Kalyanasundram, became a tenant of the shop before the Second World War. He paid, for example, $20 rent per month for January and February, 1943 by way of deposit: see Exhibit AB1. He sold cigarettes, soft drinks and certain temple artifacts. Some, if not all, of his five sons, including the Plaintiff, who is the eldest, grew up in the shop. The Plaintiff's brother, Subramanian s/o Kalyanasundram, who was the second witness for the Plaintiff, used to run the shop. So did the first witness for the Plaintiff, Shanmuggam s/o Kalyanasundram.

The shop was a zinc-roofed plank shop standing in front of the Temple.

In December 1969 the Plaintiff's father died. Some of the Trustees of the Temple knew of his death and had, in fact, attended the funeral. Some 20 days after the father's death, the shop was reopened for business as usual.

After the death of the Plaintiff's father, the yearly trustee for the time being of the Temple collected rent at the rate of $25 per month as rent and $8 per month for the water and electricity supplies. Rent receipts were issued in the name of the late father of the Plaintiff.

This state of affairs continued for some nine years. During this period, the Plaintiff was the registered proprietor of the business of the shop, having commenced his business in December 1970 as the sole proprietor. He did not run the business. He was working as a watchman in a school nearby. Subramanian s/o Kalyanasundram ran the shop until he became a full time cleaner for the Housing and Development Board in about 1978 or 1979, after which he helped to run the shop in the evenings.

The only other event worth mentioning is that in 1974 the Plaintiff had at the request of the then Trustee of the Temple renovated the shop at the cost of about $5,000.

In about 1979 the Temple decided to carry out extensive renovations to the Temple. The redevelopment of the Temple involved the demolition of the shop which was obviously the fly in the ointment. The electricity supply was disconnected in the course of the renovation works. The Temple ceased collecting rent from the Plaintiff as from May 1979.

The Temple took the view that the tenancy had continued in the estate of the deceased. Since no administration order was taken out to administer the estate, the Temple caused a notice to quit to be served on the learned Chief Justice in the usual way. The notice to quit required vacant possession to be given by the end of April 1981. Seeing that no vacant possession was given, the officers of the Temple on September 29, 1981 caused the shop to be demolished. The items remaining in the shop, which were preserved after the demolition by a firm of auctioneers, were all of a non-trading nature. The Plaintiff recovered his identity card and a cheque but he said that he had lost his cash of $316 which he had left in the shop. The demolition had taken place in spite of very clear warning by the solicitors of the Plaintiff to the Solicitors of the Defendant that the Defendant should not take the law into his own hands. These proceedings were thereafter commenced against the Defendants.

The main issue of fact for my determination is whether, as the Plaintiff alleges, he in his personal capacity became a tenant of the shop in and as from February 1970 or whether, as the Defendant alleges, the tenancy had remained with the estate of the father of the Plaintiff with the result that the tenancy was lawfully determined by the said notice to quit and that the Plaintiff was a trespasser of the shop.

I will now consider and evaluate the evidence given by and on behalf of both parties. The Plaintiff in his evidence said that after his father's death, he and his brothers and mother discussed the continuation of the business in the shop. As he was the eldest, it was agreed by all of them that he could take over the business and the tenancy of the shop. Pursuant to the agreement, he approached the Temple authority. In February 1970 he and his brother, Thangavellu s/o Kalyanasundram (PW2), called on the then Trustee of the Temple, one Karuppan Chettiar. He asked the Trustee to allow him to carry on the business in the shop and to take the tenancy of the shop in his name. He then paid the Trustee $33 for which he was issued a receipt for the rent of $25. However, he was issued a receipt in the name of his late father. The Plaintiff told the Trustee that he was paying the rent for his own account. But the Trustee told him that his father had been operating in the shop for a very long time and that it was alright to leave the father's name on the rent receipt. The Trustee told him that nothing would go wrong.

The Plaintiff further stated in evidence that in 1971 he went to pay rent to the new Trustee, one Chellappa Chettiar. He told him that he was paying the rent for his own account. The Trustee told him that he was aware of the situation.

In his cross-examination, the Plaintiff was referred to an affidavit affirmed by him on November 4, 1981 in these proceedings. He agreed that he did not immediately see the Temple authorities. He admitted that he had made a mistake in saying in his affidavit that he had seen the Trustee by the name of Chellappa Chettiar. He insisted that he spoke to Karuppan Chettiar who he knew had died in 1973. He insisted that it was Karuppan Chettiar who agreed to grant him the tenancy although it was put to him that Karuppan Chettiar did not become the Trustee of the Temple until June 1970.

Thangavellu s/o Kalyanasundram, the brother of the Plaintiff, next gave evidence. In February 1970 he was about 21 years old. He confirmed that the family had agreed to the Plaintiff taking over the business of the shop and the tenancy. In February 1970 he went to the Temple office and there met Karuppan Chettiar who approached them. Karuppan Chettiar told the Plaintiff that being the eldest son he could take over and run the business of the shop. Karuppan Chettiar knew them very well, having seen them grow up in the shop. Then, they tendered the rent and asked for the receipt to be made out in the name of the Plaintiff. Karuppan Chettiar told them that their father's name was in a shortened or abbreviated form and it was easy for the Temple to keep the accounts. He promised the Plaintiff the tenancy. It was also the evidence of Thangavellu s/o Kalyanasundram that in 1971 he and the Plaintiff called on one Chellappa Chettiar in the Temple office to change the name of the receipt. They

were told by him that it was not necessary. Thangavellu said that Chellappa Chettiar knew that the Plaintiff was claiming the tenancy for himself and was paying rent on his behalf.

The third witness for the Plaintiff was offered for cross-examination regarding his management of the shop which did not do much business after the electricity was cut off sometime in 1979.

The Defendant testified that the Trustrees of the Temple normally held office for a year, unless anyone of them had to leave for India in the meantime. One Ramanathan Chettiar was appointed the Trustee of the Temple as from February 2, 1970. He was succeeded as the Trustee of the Temple on June 2, 1970 by Karuppan Chettiar. The Defendant was appointed the Trustee of the Temple after Karuppan Chettiar.

According to the Defendant, the Plaintiff's father was selling cigarettes, cigars, soft drinks and such like at the shop. After his death, there was no change in the business. He denied that temple artifacts were sold at the shop. The Defendant also said that he had looked at the records of the Temple and there was no record that the Plaintiff had become the tenant of the shop.

In 1978 or 1979 it was decided to renovate the Temple, which involved the demolition of the shop. So, it was decided to terminate the tenancy of the Plaintiff's father. He said the Notice to Quit was duly served on the learned Chief Justice.

In cross-examination, the Defendant admitted that he did not know exactly what Karuppan Chettiar had done in the Temple office in 1970. He said that Karuppan Chettiar was very active in the affairs of the Temple and was a regular worshipper. He also said that in the absence of a Trustee, members of the management, committee could attend to the affairs of the Temple. He had at one time claimed that when he first accepted the rent from the Plaintiff he did not know that the Plaintiff's father had died. He later admitted that he knew of the death of the Plaintiff's father. The Defendant also admitted that but for the renovation of the Temple and the necessity to demolish the shop, the shop would have been permitted to remain.

The next witness for the Defendant was Chellappa Chettiar, a 79 year old gentleman who had retired to live in India. He was the Trustee of the Temple from February 3, 1969 to February 2, 1970. He denied that the Plaintiff and Thangavellu had seen him in 1971. After his retirement as a Trustee, he did not involve himself with the affairs of the Temple. He said that after the death of Kalyanasundram he remembered a young man, one of the sons of the deceased, tendered rent. He agreed it could be in January 1970. He very fairly stated that he was unable to say anything about what had transpired between the Plaintiff and Thangavellu on the one part and Karuppan Chettiar in February 1970 or thereabouts. He also said that the Temple had no intention to terminate the tenancy of the shop upon the death of Kalyanasundram.

At the resumed hearing of the case on October 11, 1984 the Defendant produced as a witness P.R.A.M. Ramanathan Chettiar s/o Sithamani Chettiar, a 62 year old gentleman and a moneylender. He was the Trustee of the Temple from February 2, 1970 up to June 2, 1970 when he was succeeded by the late Karuppan Chettiar. His evidence was that in late 1967 he was a colleague of the late Karuppan Chettiar in the moneylending firm of PRAM Firm, which was associated with the Temple, for some 10 – 15 days. Thereafter, in late 1967 the late Karuppan Chettiar left Singapore and lived in India until he returned on May 15, 1970. He said he saw him off at the Singapore Airport and he received him at the airport upon his return 2½ years later. The effect of his evidence is that it was impossible for the late Karuppan Chettiar to be present in Singapore in February 1970 and to have agreed to grant the tenancy to the Plaintiff as the Plaintiff and his brother have alleged.

Having considered all the evidence, I am satisfied in my own mind that no agreement was reached in February 1970 between the late Karuppan Chettiar and the Plaintiff under which the Plaintiff was granted an oral tenancy. I have no hesitation in accepting the entire evidence of Ramanathan Chettiar whose evidence destroyed the case for the Plaintiff. The late Karuppan Chettiar was away from Singapore and living in India for 2½ years from late 1967 and had only returned to Singapore on May 15, 1970 after which he became the Trustee of the Temple. The evidence of the Plaintiff and those of his brother regarding their conversation with and the assurances of the late Karuppan Chettiar were plainly a figment of their imagination. They thought that they would not be contradicted by a dead man. The truth of the matter was that the Plaintiff and his brother

had continued to tender rent and had accepted the rent receipt in the name of their late father without further ado, preferring to let matters remained as they were were. That was also the attitude of the Temple authorities.

To overcome the difficulties posed by the evidence of Ramanathan Chettiar, counsel for the Plaintiff invited me to find that in fact the Plaintiff was mistaken, that he had contracted with Chellappa Chettiar in early 1970 and that it was only in early 1971 that they had again talked to and were assured by the late Karuppan Chettiar about the grant of the oral tenancy to the Plaintiff. He submitted that this was essentially the first evidence of the Plaintiff who asserted this in his affidavit of November 4, 1981 which was filed in the course of these proceedings. I have to reject this submission. The Plaintiff and his brother have been proved to be totally unreliable. The version in his affidavit evidence was completely abandoned by the Plaintiff in the course of the trial. It was not put to Chellappa Chettiar. It would be entirely wrong to allow the Plaintiff to resurrect this version upon which the Defendant has had no opportunity whatsoever to meet.

I have also considered whether in the circumstances of this case an oral tenancy could be inferred, seeing that the trustees of the Temple had accepted rent from the Plaintiff or his brothers for some nine years after the death of their father. If there are sufficient primary facts, the grant of an oral tenancy could be inferred as was done by the learned trial Judge, who was upheld by the Privy Council, in *Eng Chuan & Co. & Ors.* v. *Four Seas Communications Bank Ltd.*[1] I find myself unable to make any such inference in the circumstances of this case. To begin with, one has in this case an assertion that an express oral tenancy was granted in early 1970. This assertion was not made out. Secondly, the tenancy was in the name of an individual, S. Kalyani, who died leaving his wife and children, including the Plaintiff. The Plaintiff was not the only one who could have claimed, or be granted, a tenancy of the shop.

The Plaintiff's claims are accordingly dismissed with costs.

Claims dismissed.

Solicitors: *J.B. Jeyaretnam & Co.; Hilborne & Co.*

THE "DAIEN MARU NO. 18" KENNY FRANCO & 5 ORS. v. M.V. "DAIEN MARU NO. 18", OWNERS OF & ORS. INTERESTED

[O.C.J. (Thean J.) December 19, 1984]
[Singapore – Admiralty in Rem No. 199 of 1984]

Shipping law – Claim for wages, subsistence and expenses by crew – Judgment obtained by crew as plaintiffs – Arrest of vessel by plaintiffs – Whether right of arrest lost because of judgment – Maritime lien of plaintiffs on vessel – Maritime lien attaching to or travelling with ship – Application to discharge warrant of arrest.

The plaintiffs were crew members on board the vessel "Daien Maru No. 18" ("the Vessel"). The defendants were owners of the Vessel. They commenced Admiralty Suit No. 174 of 1984 ("Owners' Suit") against the charterers of the Vessel claiming possession and arrested the Vessel on March 20, 1984. The plaintiffs filed a caveat against release of the Vessel on March 26, 1984 and on March 30, 1984 commenced the present action *in rem* against the defendants claiming wages, certain subsistence money and expenses. The plaintiffs obtained summary judgment against the defendants for the amount claimed. In the Owners' Suit the defendants eventually obtained an order for the release of the Vessel. After the release the plaintiffs arrested the Vessel in the present suit on July 25, 1984, whereupon the defendants made the present application to discharge the warrant of arrest executed on the Vessel. They contended that the plaintiffs, having obtained final judgment against the defendants for the full amount claimed had lost the right of arrest, as the plaintiffs' cause of action had merged in the judgment. The defendants relied on the decision in *The Alletta*[1].

Held, dismissing the application: (1) that once a judgment has been obtained in an action the claim therein is merged in the judgment is correct and beyond dispute. It does not follow that the right to security in the ship is lost or extinguished by such merger:

(2) the plaintiffs have a maritime lien on the vessel which arose out of the services provided for the vessel. A maritime lien on a ship is a claim or a privilege upon the ship and when it arises it attaches to or travels with the ship into whosesoever possession it comes so that an innocent purchaser of the ship may find his property, the ship, subject to a claim which existed prior to the date of purchase;

(3) a maritime lien gives a right to the ship enforceable by an action *in rem*. A plaintiff who has instituted an action *in rem* against a ship to enforce a maritime lien thereon must be entitled to arrest the ship in the same action even after he has obtained judgment, provided always that in such a case no bail has been previously put up for the ship in that action.

Cases referred to :

(1) *The Alletta* [1974] 1 Ll. R. 40.
(2) *The Point Breeze* [1928] P.135.
(3) *The Kalamazoo* (1851) 15 Jur. 885.
(4) *The Wild Ranger* (1863) Br. & Lush. 84; 167 E.R. 310.
(5) *The Henrich Bjorn* (1886) L.R. 11 P.C. 270.